



FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

# Memorandum

**TO:** Director, Reference Information Center  
Chief, Wireline Competition Bureau

**FROM:**  Daniel M. Armstrong  
Associate General Counsel

**SUBJECT:** *KMC Telecom Holdings, Inc. v. FCC & USA*, Third Cir. No. 04-3146; *SNiP LiNK, LLC v. FCC & USA*, Third Cir. No. 04-3158; and *New Edge Network, Inc. d/b/a New Edge Networks, OneEighty Communications, Inc., and Pac-West Telecomm, Inc. v. FCC & USA*, Ninth Cir. No. 04-73800. Filing of three Petitions for Review in the United States Court of Appeals for the Third and Ninth Circuits.

**DATE:** August 4, 2004

This is to advise you that, on July 28, 2004, and July 29, 2004, respectively, KMC Telecom Holdings, Inc. and SNiP LiNK, LLC filed Petitions for Review in the U.S. Court of Appeals for the Third Circuit. On July 30, 2004, New Edge Network, Inc. d/b/a New Edge Networks, OneEighty Communications, Inc., and Pac-West Telecomm, Inc. jointly filed a Petition for Review in the U.S. Court of Appeals for the Ninth Circuit pursuant to 47 U.S.C. 402(a), of the following order: *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Second Report and Order, FCC 04-164 (rel. July 13, 2004).

Petitioners contend that the Commission improperly revised its interpretation of section 252(i) of the Communications Act when it replaced its "pick-and-choose" rule with an "all-or-nothing" rule under which a requesting carrier that seeks to avail itself of terms in an interconnection agreement must adopt the agreement in its entirety.

The Third Circuit has docketed its cases as Nos. 04-3146 and 04-3158 and the Ninth Circuit has docketed its case as No. 04-73800. The attorney assigned to handle the litigation of these cases is James M. Carr.